Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	§	
	§	CC Docket No. 98-94
1998 Biennial Regulatory Review –	§	
Testing New Technology	§	

COMMENTS OF SBC COMMUNICATIONS, INC.

Comes now SBC Communications Inc. on behalf of itself and its subsidiaries[1] and files these comments in the above-referenced Notice of Inquiry ("Notice")

SBC strongly supports this effort of the Commission to eliminate unnecessary red tape in order to encourage and facilitate experiments involving new technology, including both technical trials and market trials. In fact, SBC specifically sought such relief in its Petition for Biennial Review, filed on May 8, 1998. In that document, SBC proposed that all carriers be allowed to file a letter of notification with the Commission for small-scale experiments, market trials, or technical trials with customers.

The level of regulatory oversight that should be required for technical and marketing trials should be limited based upon the fact that a trial does not constitute the offering of a common carrier service or a telecommunications service. It is simply a limited experiment to determine whether a service based upon new technology will function properly or whether there is a market for that service. Some limitation on the

[1] SBC Communications Inc. is the parent company of various subsidiaries, including telecommunications carriers. These subsidiaries include Southwestern Bell Telephone Company ("SWBT"), Pacific Bell, Nevada Bell, and various wireless carriers including Southwestern Bell Mobile Systems, Inc. ("SBMS"), and Southwestern Bell Wireless Inc. ("SWBW") and Pacific Bell Mobile Services ("PBMS"). The abbreviation "SBC" shall be used herein to include each of these subsidiaries as appropriate in the context.

number of customers that can participate in a market trial should probably be established in order to prevent the misuse of the trial process for the offering of a commercial service. If a trial stays within that size limitation, it should not trigger any action on the part of the Commission, unless some aspect of the trial has the potential to degrade or otherwise interfere with existing services. No regulatory requirements should be established for the trial process, other than size, reasonable notice and full disclosure to trial participants, so long as the trial will not adversely affect the integrity of the public switched network or other carriers' services.

As the Commission has correctly recognized, it is not only the requirements for technological trials that can cause barriers to entry. A carrier can complete technical testing and know with certainty that its new service is technologically reliable and will function as intended. Yet, until market trials can be conducted to determine whether consumers are willing to pay a compensatory price for the service, the carrier cannot really know whether it has a marketable service or not. Such trials usually do not pose any threat to the integrity of the public switched network or the services of other carriers.

As stated in the Notice, there are certain rule requirements "that serve legitimate and, indeed, compelling regulatory ends under certain circumstances." (Notice, Para. 11) In particular, the rules requiring "radio licensing... prevents radio frequency interference caused by and to co-channel and adjacent channel service providers." (Id.) In fact, the Federal Communications Act requires the issuance of a license by the FCC for any use or operation of any "apparatus for the transmission of energy or communications or signals by radio." (47 USC 301) The Commission cannot, and should not, eliminate any

requirement of a license under Section 301 or its rules regarding interference protection of existing licensees of the spectrum. The Commission should not broadly attempt to "streamline" experimental technologies as such affects spectrum licensing or interference protection because of the unique issues invoked. Rather the Commission was correct in establishing a separate rulemaking for experimental radio regulations and should adhere to the regulations codified in Part 5 of the Commission's rules.

Likewise, where there is any possibility that interconnecting carrier services could be adversely affected by the trial service, those carriers should be given at least thirty days advance notice of the trial. Further, some procedure should be established to intervene in the trial process whenever any other carrier certifies to the Commission that the trial is adversely affecting its services or threatening the integrity of the public switched network. However, where there is no indication that the trial will threaten network integrity or the services of other carriers, no significant advance notice requirement can be justified. The only requirement should be notice to the Commission, with certification that the service will not detrimentally affect the public switched network, the trial carrier's existing services, or the services of other interconnecting carriers.

To the extent that network disclosure would be necessary to allow equipment vendors the opportunity to develop CPE to accompany the new service, that notice requirement should be based upon the date the new service is actually offered to the public, not the date that a trial is commenced to determine whether there is a viable service to offer to the public. Of course, the carrier would always have the option of

providing the network disclosure notice at an earlier point, whether at the time the trial is begun or even earlier, in order to expedite the introduction of the new service.

There is very little need for regulatory restraints to protect the interests of the customers that participate in a trial. It would be very rare that the interests of customers who participate in such trials would be threatened because the very thing the carrier is testing is customer reaction to the price and attributes of the service. Failure to provide adequate information to the participating customers could invalidate the trial results, so the carrier has strong motivation to provide that information in order to achieve valid test results. However, it is still reasonable to require that the company conducting the trial fully disclose to potential participants that the trial service is being made available for testing purposes only, that it may only be available for term of the trial, and that the company will thereafter make a decision as to whether it will ever offer the service to the public and, if so, at what price. In addition, the company should fully disclose to each trial participant all of the duties that participants are expected to perform as a part of the trial, including any duty to evaluate the service or respond to inquiries about the trial service. The present ninety day disclosure period required by Paragraph 47 of the CC Docket No. 88-616 Memorandum Opinion and Order is too long; no more than thirty days should be required for the advance customer disclosure. Nothing further is needed to protect customers that participate in the trial process. Full disclosure allows the customer to make an informed decision as to whether the benefit of participating in the trial is worth the burden required by such participation.

SBC agrees that the conduct of a trial should not, in and of itself, change any of the regulatory requirements for the permanent introduction of the service or product. However, those requirements should be subjected to the same type of scrutiny to eliminate unnecessary requirements for the introduction of new services because the burdensome requirements for introduction of new services also tend to unnecessarily delay market delivery of new and beneficial services to the public. Certainly, there should be no requirement that trial service be disconnected at the end of the trial period, if permanent approval for the trial service is secured prior to the end of the trial. When a trial is successful and customers like the service sufficiently well that the Company decides that the expense of introducing a new service is justified, it does not make sense to require that the trial service of the trial participants be disconnected. The interests of the trial participants in such cases is best served by not requiring the disconnection of services they have come to know and rely upon. No member of the public is harmed by such reasonable transition to the permanent service at the end of a successful trial.

The concern raised in the NOI about ensuring that shareholders are bearing the full cost of technical and market trials is, at present, a moot point, since it is highly unlikely that the cost of trials could have any effect on the prices paid by end user customers under price cap regulation. Further, competition will ensure that scarce resources are not wasted on unnecessary trials as we go forward. Unnecessary regulation of trials could, however, cause even prudent companies to skip the trial process because of the time and expense of conducting trials. The more important regulatory goal should

be the avoidance of the economic waste that occurs when a new service is introduced without benefit of a market trial, only to discover that there is no market for the service.

It is the position of SBC that the forbearance doctrine is not here implicated because there is no general offering of the trialed service to the public, nor any need for regulatory oversight to protect any valid public interest. Forbearance would only be necessary to the extent that the FCC treats such trials as if they were common carriage. Inasmuch as the definition of a trial does not involve provision of a service "to the public," the trialed service is not a "telecommunications service" under 47 U.S.C. Section 153(46). Where there has been no offering of a common carrier service to the general public, there has been no "holding out to serve" and no attachment of 214 or other obligations, such as to require forbearance.

In conclusion, SWBT applauds the forward-looking approach taken by the Commission in this Notice and hopes that decisions will be made and implemented that benefit not only the telecommunications carriers that will be conducting trials of new and competitive services, but also the customers who are awaiting the advent of those new and exciting services. For all of the reasons set forth above, SBC respectfully submits that the best way to simplify and expedite the trial process is for the Federal Communications Commission to eliminate any regulatory requirements for the trial process, with the exception of requirements that serve to protect the integrity of the public switched network and other carrier's services, as well as notice to the Commission and full disclosure of trial requirements to trial participants.

Respectfully Submitted,

SBC COMMUNICATIONS INC.

By: Barbara R. Hunt

Robert M. Lynch
Durward D. Dupre
Barbara R. Hunt

One Bell Plaza, Room 3026
Dallas, Texas 75202
214-464-5170

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Certificate of Service

I, Mary Ann Morris, hereby certify that the foregoing, "Comments of SBC Communications, Inc.," in CC Docket No. 98-94 has been served on July 21, 1998, to the Parties of Record.

Mary Ann Morris

July 21, 1998

INTERNATIONAL TRANSCRIPTION SERVICES
2100 M STREET, NW
SUITE 140
WASHINGTON DC 20037

SECRETARY, FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET, NW
ROOM 222
WASHINGTON DC 20554

THOMAS J BEERS
COMMON CARRIER BUREAU
INDUSTRY ANALYSIS DIVISION
2033 M STREET NW
ROOM 500
WASHINGTON DC 20554

SCOTT K BERGMANN
COMMON CARRIER BUREAU
INDUSTRY ANALYSIS DIVISION
2033 M STREET NW
ROOM 500
WASHINGTON DC 20554